

1
2
3 UNITED STATES DISTRICT COURT
4 WESTERN DISTRICT OF WASHINGTON
5 AT TACOMA

6 BARRY SCOTT BLAND,

7 Petitioner,

8 v.

9 UNITED STATES OF AMERICA,

10 Respondent.

CASE NO. C19-5482 BHS

ORDER GRANTING
RESPONDENT'S UNOPPOSED
MOTION TO STAY

11 This matter comes before the Court on Respondent United States of America's
12 ("Government") unopposed motion to stay. Dkt. 3. The Court has considered the
13 pleadings filed in support of the motion and the remainder of the file and hereby grants
14 the motion for the reasons stated herein.

15 On May 31, 2019, Petitioner Barry Scott Bland ("Petitioner") filed a motion to
16 vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. Dkt. 1. Petitioner was
17 previously convicted of Felon in Possession of Ammunition, a violation which requires a
18 qualifying predicate felony offense. 18 U.S.C. §§ 922(g)(1), 924(a)(2). Petitioner's
19 motion alleges that on the date he possessed ammunition, he did not have a qualifying
20 felony offense because none of his applicable predicate offenses were punishable by
21 more than one year under Washington State's mandatory sentencing guidelines. Dkt. 1.
22

1 On June 4, 2019, the Government filed a motion to stay consideration of
2 Petitioner's motion. Dkt. 3. The Government explains that the issue of whether a
3 defendant is properly convicted of violating 18 U.S.C. §922(g)(1) when the state
4 guideline range for the predicate offense was less than one year is currently before the
5 Ninth Circuit in *United States v. McAdory*, No. 18-30112. *Id.* at 2. The Circuit held oral
6 argument in *McAdory* on May 14, 2019, and a decision is now pending. *Id.* The
7 Government argues that staying Petitioner's motion until a decision is announced will
8 preserve judicial and prosecutorial resources. *Id.* Petitioner, who is represented by
9 counsel, did not respond to the motion.

10 Pursuant to local rule, the Court construes Petitioner's failure to respond to the
11 motion as an admission that the motion has merit. Local Rules W.D. Wash. LCR 7(b)(2).
12 Further, the Court agrees that a short stay until the appeal resolves will preserve judicial
13 resources because the decision is likely to shed light on the merits of Petitioner's motion.
14 Therefore, the Government's unopposed motion to stay, Dkt. 3, is **GRANTED**. The
15 Government shall promptly notify the Court and counsel for Petitioner when the Circuit
16 issues the *McAdory* decision.

17 **IT IS SO ORDERED.**

18 Dated this 18th day of June, 2019.

19
20 

21 BENJAMIN H. SETTLE
22 United States District Judge